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DONOVAN E. WALKER
Lead Counsel
dwalker@idahopower.com

July 29, 2015

VIA HAND DELIVERY

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
Boise, Idaho 83702

Re: Case No. IPC-E-15-22
AgPower DCD, LLC's Third Amendment to Firm Energy Sales Agreement
Idaho Power Company's Application

Dear Ms. Jewell:

Enclosed for filing in the above matter please find an original and seven (7) copies of Idaho Power Company's Application for Approval of Firm Energy Sales Agreement Amendment.

Very truly yours,



Donovan E. Walker

DEW:csb
Enclosures

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Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF IDAHO POWER COMPANY FOR)	CASE NO. IPC-E-15-22
APPROVAL OF THE THIRD AMENDMENT)	
TO THE FIRM ENERGY SALES)	APPLICATION FOR APPROVAL
AGREEMENT BETWEEN IDAHO POWER)	OF FIRM ENERGY SALES
COMPANY AND AGPOWER DCD, LLC.)	AGREEMENT AMENDMENT
)	

Idaho Power Company ("Idaho Power"), in accordance with RP 52 and the applicable provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), hereby respectfully applies to the Idaho Public Utilities Commission ("Commission") for an order approving the Third Amendment ("Amendment") to the Firm Energy Sales Agreement ("FESA") between Idaho Power and AgPower DCD, LLC, a PURPA qualifying facility ("QF"). The Amendment is submitted herewith as Attachment 1. This Amendment changes the Net Energy Amount notification process, similar to the process that has been approved by the Commission in six recently approved Energy Sales Agreements and Energy Sales Agreement amendments with other PURPA QFs.

In support of this Application, Idaho Power represents as follows:

I. INTRODUCTION AND BACKGROUND

1. Idaho Power and Cargill Incorporated (the original seller) entered into a FESA on January 22, 2010, for the purchase and sale of energy produced by the Bettencourt Dry Creek Biofactory ("Facility") located near Hansen, Idaho. This FESA was approved by the Commission in Order No. 31034 on April 1, 2010.

2. On June 24, 2014, a First Amendment was entered into by the parties in which ownership of the Facility and all rights, interests, and obligations under the FESA were transferred to AgPower DCD, LLC ("Seller").

3. On August 19, 2014, the parties entered into a Second Amendment to change the definition of Mid-Columbia Market Energy Cost in this FESA, consistent with the stipulation approved by the Commission in Order No. 33053 on June 10, 2014. The Second Amendment was approved by the Commission in Order No. 33184 on November 21, 2014.

4. Paragraph 6.2 of the FESA allows the Seller to adjust the "Initial Year Monthly Net Energy Amounts" on a quarterly basis, consistent with a Commission directive that seller revisions are to be submitted no sooner than "the end of month three and every three months thereafter." Order No. 29632, p. 23.

5. On April 8, 2015, Idaho Power received a letter from the Seller claiming a *force majeure* event had occurred at the Facility, which resulted in reduced fuel supply at the Facility and, consequently, the electricity output would be below the Seller's adjusted monthly Net Energy Amounts. Seller sought relief from the 90/110 performance requirement due to the claimed *force majeure* event beginning in March

2015 and lasting until the fuel supply problem was resolved. Idaho Power did not accept Seller's claim as a valid *force majeure* event under the FESA and therefore did not change the monthly Net Energy Amounts previously submitted by the Seller.

6. Rather than dispute the claim of *force majeure*, the parties agreed to allow the Seller to adjust the monthly Net Energy Amounts for June through September 2015 and entered into this Amendment on July 13, 2015, as a resolution of any disputes relating to the claim of *force majeure*.

II. THE AMENDMENT

7. In six recently approved Energy Sales Agreements between Idaho Power and other QFs, the Commission has allowed a change in the Net Energy Amount notification process from a quarterly basis to monthly basis. See Order Nos. 33102, 33103, 33104, 33156, 33191, and 33240. In addition, the Commission has approved amendments similar to this Amendment as recently as April 28, 2015. See Order No. 33289. In Order No. 33102, the Commission stated:

we find that monthly, as opposed to quarterly, reporting of energy generation estimates is a reasonably negotiated term between the parties and not inconsistent with the Commission's guidance and findings in Order No. 29632. As we stated in that Order, 'it is reasonable and operationally expedient to require QFs to provide Idaho Power with monthly kWh production estimates. . . . The Commission finds it reasonable to provide more frequent opportunities to revise generation estimates than [the two years] proposed by the Company. We find that the interest of the Company in planning for QF resources is better served if the generation forecast is a reliable estimate.' Order No. 29632 at 23.

The Commission also stated, "We find that a provision allowing for monthly generation estimate updates is consistent with that purpose." See Order No. 33102, p. 6.

8. This Amendment changes paragraph 6.2 to allow the Seller to adjust the “Initial Year Monthly Net Energy Amounts” on a monthly, rather than quarterly, basis. As this is an existing project that has been operating and delivering energy under an Operation Date of May 3, 2010, the Initial Monthly Net Energy Amounts have been revised by the Seller in accordance with the FESA. However, under this Amendment, the Seller can submit future revisions on a monthly basis, with a minimum of 30 days notice prior to the beginning of the next month, rather than once every three months. A table was added to the Amendment indicating both “Notification Month” and “Future monthly Net Energy Amounts eligible to be revised,” primarily to provide clarity to the confusing nature of the Estimated Net Energy Amounts and the Seller’s desire to update the same. Both Idaho Power and the Seller propose Commission adoption of this change. The Seller gains more clarity and flexibility in adjusting its estimated energy deliveries and Idaho Power maintains the stability in the estimates necessary for its planning and operation.

III. PROCEDURE

9. As Commission Staff (“Staff”) recommended and the Commission approved in Case No. IPC-E-15-11, due to the limited scope of the Amendment, Idaho Power requests that the Commission approve the proposed Amendment upon Staff’s review and without further process.

10. Alternatively, should the Commission determine that further process is required, Idaho Power believes that a hearing is not necessary to consider the issues presented herein and respectfully requests that this Application be processed under Modified Procedure; i.e., by written submissions rather than by hearing. RP 201, *et seq.*

IV. COMMUNICATIONS AND SERVICE OF PLEADINGS

11. Communications and service of pleadings, exhibits, orders, and other documents relating to this proceeding should be sent to the following:

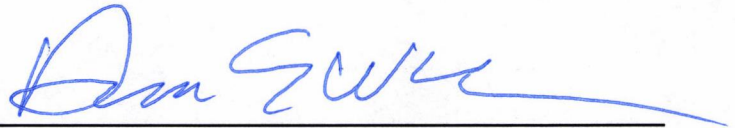
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V. REQUEST FOR RELIEF

12. Idaho Power respectfully requests that the Commission issue an order approving the Third Amendment to the Firm Energy Sales Agreement submitted herewith without change or condition

Respectfully submitted this 29th day of July 2015.



DONOVAN E. WALKER
Attorney for Idaho Power Company


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of July 2015 I served a true and correct copy of the within and foregoing APPLICATION FOR APPROVAL OF FIRM ENERGY SALES AGREEMENT AMENDMENT upon the following named parties by the method indicated below, and addressed to the following:

AgPower DCD, LLC

Jim R. Wiest
c/o Camco Clean Energy
9360 Station Street, Suite 375
Lone Tree, Colorado 80124

☐ Hand Delivered
☒ U.S. Mail
☐ Overnight Mail
☐ FAX
☒ Email jim.wiest@camcocleanenergy.com


Christa Bearry, Legal Assistant

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION
CASE NO. IPC-E-15-22

IDAHO POWER COMPANY

ATTACHMENT 1

**THIRD AMENDMENT
TO THE
FIRM ENERGY SALES AGREEMENT
BETWEEN
IDAHO POWER COMPANY
AND
AGPOWER DCD, LLC**

This Third Amendment of the Firm Energy Sales Agreement ("Third Amendment") is entered into on this 13th day of July, 2015 by and between Idaho Power Company, an Idaho corporation ("Idaho Power"), and AgPower DCD, LLC, a Delaware limited liability company ("DCD" or "Seller") (individually a "Party" and collectively the "Parties").

WITNESSETH:

WHEREAS, Idaho Power and original Seller entered into a Firm Energy Sales Agreement on January 22, 2010, ("Agreement") for the purchase and sale of energy produced by the Seller's facility ("Project") that was approved by the Idaho Public Utilities Commission ("Idaho PUC") in Order No. 31034 on April 1, 2010;

WHEREAS, on June 24, 2014, in the First Amendment to the original Agreement, ownership of the Project and all rights, interests and obligations under the original Agreement, was transferred to AgPower DCD, LLC;

WHEREAS, on August 19, 2014, the Parties entered into a Second Amendment to change the definition of Mid-Columbia Market Energy Cost in this Agreement consistent with the Stipulation approved by the Idaho PUC in Order No. 33053 on June 10, 2014. The Second Amendment was approved by the Idaho PUC in Order No. 33184 on November 21, 2014.

WHEREAS, on April 7, 2015, the Seller made a claim of Force Majeure relating to Seller's Ongoing Monthly Net Energy Amounts, which is not accepted by Idaho Power;

WHEREAS, notwithstanding the Parties' respective positions regarding the disputed claim of Force Majeure, the Parties desire to amend the Agreement to replace Article 6, sections 6.2.2 and 6.2.3, to revise Ongoing Monthly Net Energy Amounts for June, July, August, and September 2015, and to abide by the terms of this Third Amendment as a resolution of any disputes relating to the claim of Force Majeure.

NOW THEREFORE, in consideration of the mutual promises and covenants and other consideration set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following amendments to the Agreement:

1. **Incorporation of Recitals.** The above-stated recitals are incorporated in this Third Amendment and made a part of this Third Amendment by this reference to the same extent as if these recitals were set forth in full at this point.

2. **Article VI: Purchase and Sale of Net Energy.** Article 6, sections 6.2.2 and 6.2.3 shall be deleted in their entirety and the following sections shall be substituted in their stead:

6.2.2 Seller's Adjustment of Initial Year Monthly Net Energy Amounts - Prior to the Operation Date, the Seller may revise all of the previous initial year monthly Net Energy Amounts by providing written notice to Idaho Power in accordance with paragraph 25.1.

6.2.3 Seller's Adjustment of Monthly Net Energy Amounts After the Operation Date - After the Operation Date, the Seller may revise any future monthly Net Energy Amounts by providing written notice no later than 5 PM Mountain Standard time on the last business day of the Notification Month specified in the following schedule:

<u>Notification Month</u>	<u>Future monthly Net Energy Amounts eligible to be revised</u>
November	January and any future months
December	February and any future months
January	March and any future months
February	April and any future months
March	May and any future months
April	June and any future months
May	July and any future months
June	August and any future months
July	September and any future months
August	October and any future months
September	November and any future months
October	December and any future months

a.) This written notice must be provided to Idaho Power in accordance with paragraph 25.1 or by electronic notice provided and verified via return electronic verification of receipt to the electronic notices address specified in paragraph 25.1.

b.) Failure to provide timely written notice of changed Net Energy Amounts will be deemed to be an election of no change from the most recently provided Net Energy Amounts.

3. **Commission Approval.** The obligations of the Parties under this Third Amendment are subject to the Idaho PUC's approval of this Third Amendment and such approval being upheld on appeal, if any, by a court of competent jurisdiction. The Parties will submit this Third Amendment to the Idaho PUC and recommend approval in its entirety pursuant to RP 274.

4. **Effect of Amendment.** Except as expressly amended by this Third Amendment, the Agreement shall remain in full force and effect.

5. **Capitalized Terms.** All capitalized terms used in this Third Amendment and not defined herein shall have the same meaning as used in the Agreement.
6. **Scope of Amendment.** This Third Amendment shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, executors, administrators, successors, and assigns, who are obligated to take any action which may be necessary or proper to carry out the purpose and intent thereof.
7. **Authority.** Each Party represents and warrants that (i) it validly exists and in good standing in the state in which it is organized, (ii) it is the proper party to amend the Agreement, and (iii) it has the requisite authority to execute this Third Amendment.
8. **Counterparts.** This Third Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Third Amendment to be executed in their respective names on the dates set forth below:

AGPOWER DCD LLC

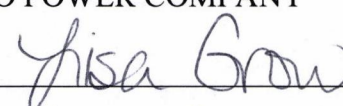
By: 

Name: JAMES P. WEST

Title: MANAGER

Date: JUNE 30, 2015

IDAHO POWER COMPANY

By: 

Name: Lisa Grow

Title: SVP Power Supply

Date: 7.13.15